

THE HONORABLE TIMOTHY W. DORE  
Chapter 11  
Date: January 6, 2017  
Time: 9:30 a.m.  
Response Date: January 4, 2017  
Location: Courtroom 8106

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In Re	)	Bankruptcy No. 16-15814-TWD
	)	<b>(Lead Case)</b>
Lodge Holdings Company,	)	
	)	Bankruptcy No. 16-15849-TWD
Mukilteo Lodge, LLC,	)	Bankruptcy No. 16-15850-TWD
Kirkland Lodge, LLC,	)	Bankruptcy No. 16-15851-TWD
Stadium Lodge, LLC,	)	Bankruptcy No. 16-15852-TWD
Downtown Lodge, LLC,	)	Bankruptcy No. 16-15853-TWD
Mill Creek Lodge, LLC,	)	Bankruptcy No. 16-15854-TWD
Greenwood Lodge, LLC	)	<b>(Jointly Administered Cases)</b>
	)	
Debtors.	)	CBC PARTNERS' RESPONSE IN
	)	SUPPORT OF MOTION FOR
	)	EMERGENCY ORDER AUTHORIZING
	)	INTERIM USE OF CASH
	)	COLLATERAL AND ADEQUATE
	)	PROTECTION PAYMENT

**I. INTRODUCTION & RELIEF REQUESTED**

CBC Partners I, LLC (“CBC”), by and through its undersigned counsel, hereby files this response in support of the Motion for Emergency Order Authorizing Interim Use of Cash Collateral and Adequate Protection Payment and Setting Final Hearing (the “**Cash Collateral Motion**”) filed by the above-captioned debtors (collectively, the “**Debtors**”). CBC respectfully requests that the Court enter the Debtors’ proposed form of order attached to the Cash Collateral Motion.

RESPONSE ISO MOTION FOR ORDER AUTHORIZING  
INTERIM USE OF CASH COLLATERAL - 1  
No. 16-15814-TWD

126390.0019/6842831.1

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## II. BACKGROUND FACTS

Lodge Holdings Company (“**Holdings**”) and six of Holdings’ wholly-owned subsidiaries (the “**Debtor Subsidiaries**”) are the debtors in the above-captioned administratively consolidated Chapter 11 case. Two of Holdings’ other wholly-owned subsidiaries are not in bankruptcy, West Seattle Lodge LLC and Renton Lodge LLC (the “**Non-Debtor Subsidiaries**”).

On or around June 10, 2016, CBC extended a non-revolving credit (the “**Loan**”) to Holdings, the Debtor Subsidiaries, and the Non-Debtor Subsidiaries (collectively, the “**CBC Debtors**”), evidenced, in part, by that certain Secured Promissory Note dated as of June 10, 2016, in the stated principal amount of Eight Hundred Twenty-Five Thousand Dollars (\$825,000) (as amended from time to time, the “**Note**”), plus accrued interest at a fixed rate of thirteen and one half percent (13.5%). The Note and all other documents, instruments, amendments, modifications, and agreements relating to, and expressly referencing the Loan shall collectively be referred to herein as the “**Loan Documents**.”

The CBC Debtors’ obligations under the Loan are secured by a security interest in favor of CBC in and to all of the CBC Debtors’ presently owned and thereafter acquired inventory, accounts, general intangibles, rights to payment, and equipment, together with all products and proceeds of the foregoing (as more fully described in the Loan Documents, the “**Collateral**”).<sup>1</sup> CBC also holds a security interest in Collateral owned by the Non-Debtor Subsidiaries. The Loan is also personally guaranteed by the CBC Debtors’ principal, Shawn Roten (“**Roten**”), and secured by a deed of trust on Roten’s residence.

The Loan, as amended, will mature by its terms on June 10, 2017. Debtors remain indebted to CBC for the unpaid principal balance owing on the Note in the amount of \$850,000, plus interest, attorney’s fees, costs, and other expenses owing under the Loan Documents.

<sup>1</sup> The relative lien priorities of CBC and other secured creditors with respect to inventory, accounts and general intangibles are set forth on Schedule A to the Debtors’ proposed form of order granting the Cash Collateral Motion. See ECF No. 48.

1 **III. LEGAL ARGUMENT**

2 All of Holdings and the Debtor Subsidiaries' revenue is derived from proceeds of sale  
3 of inventory, which, together with all of the estates' cash on hand as of the date of filing and  
4 any post-petition proceeds of CBC's pre-petition Collateral, constitute cash collateral (the  
5 "**Cash Collateral**"). 11 U.S.C. § 363(a). Holdings and the Debtor Subsidiaries are prohibited  
6 from using the Cash Collateral without either CBC's consent or the Court's authorization. 11  
7 U.S.C. § 363(c)(2). If the Court authorizes use of the Cash Collateral, the Court must condition  
8 such use on sufficient adequate protection of CBC's interest. 11 U.S.C. § 363(e).

9 The adequate protection required under Section 363 may be provided in three ways:  
10 (1) by requiring the Debtors to make periodic cash payments to CBC, (2) by providing CBC  
11 with additional or replacement liens, and/or (3) by granting CBC administrative expense  
12 priority under Section 503(b)(1). 11 U.S.C. § 361. Each of these means of providing adequate  
13 protection is designed to offset the anticipated decrease in value of CBC's interest in the  
14 Collateral while this administratively consolidated case is pending and the Debtors are using  
15 the Cash Collateral. *Id.*

16 The Ninth Circuit has acknowledged that an equity cushion may serve as a sufficient  
17 basis for adequately protecting a secured creditor's interest; however, such a determination  
18 depends on the facts of the specific case. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir.  
19 1984). In making that determination, the Non-Debtor Subsidiaries, Roten, and their assets are  
20 irrelevant. Nothing in the Bankruptcy Code alters a creditor's right to seek full payment from  
21 the bankrupt debtor "before or in lieu of seeking payment from third-party sources." *In re*  
22 *Sacred Heart Hosp. of Norristown*, 182 B.R. 413, 418 n. 3 (Bankr. E.D. Pa. 1995); *see also In*  
23 *re Gessin*, 668 F.2d 1105, 1107 (9th Cir. 1982) ("It has long been established that a creditor is  
24 entitled to pursue his claims against others liable on the same debt to the full extent of the  
25 amount owed on that debt."); *R.F.C. v. Denver & R.G.W.R. Co.*, 328 U.S. 495, 529, 66 S. Ct.  
26 1282, 1300, 90 L. Ed. 1400 (1946) ("The rule is settled in bankruptcy proceedings that a

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1 creditor secured by the property of others need not deduct the value of that collateral or its  
2 proceeds in proving his debt.”). Without considering the Non-Debtor Subsidiaries, Roten, and  
3 their assets, the strength of CBC’s interest in the Debtors’ Collateral is uncertain. Allowing  
4 the Debtors to use CBC’s cash collateral without adequate protection would deprive CBC’s  
5 benefit of the bargain with respect to its secured loan in contravention of Section 363. *See,*  
6 *e.g., In re Am. Mariner Indus., Inc.*, 734 F.2d 426, 431 (9th Cir. 1984) *overruled on other*  
7 *grounds by United Sav. Ass’n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S.  
8 365, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988)).

9 Even if the Court were to consider Roten’s personal guaranty, the record is void of any  
10 facts indicating that Roten or his residence adequately protect CBC’s interests which is fatal  
11 to the UST’s position that the Court should authorize the use of cash collateral without  
12 replacement liens or adequate protection payments. 11 U.S.C. § 363(p)(1); *see also*  
13 *Lombardo’s Ravioli Kitchen, Inc.*, No. 08–20774, 2009 WL 585814, at \*1 (Bankr. D. Conn.  
14 Feb. 20, 2009); *see also In re Swedeland Development Group, Inc.*, 16 F.3d 552, 564 n. 14 (3d  
15 Cir. 1994) (“The sufficiency of [a third-party guaranty] would depend, inter alia, on the  
16 financial strength of the guarantor.”); *In re Carolina Utilities Supply Company, Inc.*, 118 B.R.  
17 412 (Bankr. D. S.C. 1990) (unsecured guaranty did not constitute adequate protection where  
18 there was no evidence in the record about the guarantor’s financial condition). Likewise, the  
19 record is void of any tangible evidence of the Non-Debtor Subsidiaries’ financial conditions.  
20 At best, the UST asserts that West Seattle Lodge LLC is “apparently solvent,” while Renton  
21 Lodge LLC is not yet operating and has no set opening date. In short, the UST’s request that  
22 the Court authorize the Debtor’s use of cash collateral without adequate protection effectively  
23 deprives CBC of its personal property collateral and proposes that CBC look to non-debtor  
24 collateral of unspecified and unsubstantiated value.

#### 25 IV. CONCLUSION

26 For the foregoing reasons, CBC respectfully requests that the Court enter the Debtors’

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1 proposed form of order attached to the Cash Collateral Motion, in recognition of the detriment  
2 to CBC if the Debtor dissipates its Collateral without replacement liens and adequate protection  
3 payments.

4 DATED: January 4, 2017

5 LANE POWELL PC

6  
7 By /s/ Gregory R. Fox

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